

VZCZCXRO7290
OO RUEHTRO
DE RUEHC #9213/01 0620037
ZNR UUUUU ZZH
O 030021Z MAR 09
FM SECSTATE WASHDC
TO RUEHAK/AMEMBASSY ANKARA IMMEDIATE 7383
RUEHLO/AMEMBASSY LONDON IMMEDIATE 2476
RUEHME/AMEMBASSY MEXICO IMMEDIATE 9031
RUEHFR/AMEMBASSY PARIS IMMEDIATE 3142
RUEHSJ/AMEMBASSY SAN JOSE IMMEDIATE 0207
RUEHKO/AMEMBASSY TOKYO IMMEDIATE 7941
RUEHVI/AMEMBASSY VIENNA IMMEDIATE 7501
RUEHVB/AMEMBASSY ZAGREB IMMEDIATE 2277
INFO RUEHBJ/AMEMBASSY BEIJING IMMEDIATE 6160
RUEHHI/AMEMBASSY HANOI IMMEDIATE 8756
RUEHKM/AMEMBASSY KAMPALA IMMEDIATE 5369
RUEHKH/AMEMBASSY KHARTOUM IMMEDIATE 7076
RUEHMO/AMEMBASSY MOSCOW IMMEDIATE 8160
RUEHOU/AMEMBASSY OUAGADOUGOU IMMEDIATE 8222
RUEHTRO/AMEMBASSY TRIPOLI IMMEDIATE 5887

UNCLAS SECTION 01 OF 02 STATE 019213

SENSITIVE
SIPDIS

E.O. 12958: N/A

TAGS: [UNSC](#) [PREL](#) [PHUM](#) [SU](#) [XA](#) [XW](#)

SUBJECT: SUDAN: DEMARCHE REQUEST ON ICC ARREST WARRANT FOR
SUDANESE PRESIDENT BASHIR

REF: A. STATE 12900

[1](#)B. STATE 19203

[1](#)1. (SBU) As they deem appropriate and useful, action addressees are instructed to approach host countries at an appropriate level regarding the International Criminal Court's (ICC) likely announcement of an arrest warrant for Sudanese President Omar al-Bashir on Wednesday, March 4. Libya is likely to call for a UN Security Council briefing on the issue sometime after the announcement and may seek a UN Security Council Press Statement. The United States Government remains strongly opposed to the tabling of a UNSC resolution calling for an Article 16 Resolution deferral of the anticipated ICC arrest warrant of Sudanese President Omar Hassan al-Bashir. We also remain opposed to any other Council document on the announcement, unless such a document is necessary in response to significant violence or other events in Sudan in response to the ICC decision (e.g. the Government of Sudan expels the UN or Western diplomats).

[1](#)2. (SBU) We continue to believe a low-key response from the UN Security Council following the ICC indictment would be the best approach. We understand Libya plans to convene a Security Council meeting on the ICC arrest warrant soon after the announcement (possibly by Friday, March 6). Libya will likely seek Council members' support for a UN Security Council Press Statement. We do not support such a statement under the present circumstances and doubt the Council could come to consensual agreement on a text. Post may draw from the appropriate refuels or background below to obtain U.S. objectives.

Objectives

[1](#)3. (SBU) Posts should pursue the following objectives:

-- obtain or reaffirm host country's commitment to oppose an Article 16 resolution following the anticipated issuance of an ICC arrest warrant for President Bashir;

-- obtain host country's concurrence on a muted response to the likely ICC announcement, including opposing a Security Council statement unless a statement is necessary in response to significant violence or other events in Sudan in response

to the ICC decision (e.g. the Government of Sudan expels UN or Western diplomats).

Reporting Deadline

¶4. (U) As appropriate and useful, posts should approach host countries and report back to the Department by 12pm Eastern Standard Time on Wednesday, March 4, 2009.

Background

¶5. (U) Security Council Resolution 1593 (2005) referred the situation in Darfur to the Prosecutor of the ICC. Despite well-known U.S. concerns with the ICC, the United States did not veto the resolution (but abstained). The resolution was adopted by the Council 11-0-4 (U.S., Algeria, Brazil, China).

¶6. (U) In July 2008, ICC Chief Prosecutor Luis Moreno-Ocampo applied for an arrest warrant with the ICC's Pre-Trial Chamber (PTC) for Sudanese President Omar Hassan al-Bashir. The indictment application charged Bashir with two counts of war crimes, three counts of genocide, and five

STATE 00019213 002 OF 002

counts of crimes against humanity. The PTC has announced it will make its decision on Ocampo's request on March 4 at 14:00 (The Hague).

¶7. (SBU) Soon after the arrest warrant application was announced Sudan launched an international campaign to invoke Article 16 of the Rome Statute, which allows the Security Council (via a resolution) to defer for up to one year a case pending in the ICC, Sudan's allies, including China, the African Union (AU), the Organization of the Islamic Conference (OIC), and the Arab League, began to push for an Article 16 resolution.

¶8. (SBU) So far, no UNSC member has introduced an Article 16 deferral resolution in the UNSC. We suspect this is most likely because no more than six or seven Security Council countries have expressed support for an Article 16 deferral. In order for a UNSC resolution to be approved, it must receive at least nine supporting votes, as well as no vetoes by any of the P5. While it is doubtful the proponents of the resolution will obtain the nine necessary votes, we fear if the proponents think they are even close to nine votes they may bring the resolution forward as a political gesture to signify that a majority of the Security Council supports the action. Therefore, the USG would like to ensure firm commitments from at least six other UNSC members to oppose or abstain on an Article 16 deferral resolution. All action addresses have indicated they are not likely to support an Article 16 resolution, but with the announcement pending, we would like to ensure this is still the case. In the case of Turkey, both in Washington and at post we continue to raise the issue at a high level with Turkish officials in the hopes of securing at least a commitment to abstain.

¶9. (U) Proponents of deferring the ICC case argue the indictment of Bashir could affect stability on the ground in Darfur and scuttle the Comprehensive Peace Agreement (CPA). To a certain extent these fears have been fed by some actors within the Government of Sudan who have made veiled threats to the international community should an arrest warrant be issued for President Bashir (e.g. we cannot guarantee the safety of westerners, all options are on the table, the rebels will use the indictment to create chaos in Darfur). We have underscored to the GOS that any retaliatory measures against the UN, humanitarian organization, or other westerners would not serve the interests of the GOS and will not be tolerated by the international community. The United

States believes justice and peace are not mutually exclusive. We cannot allow events at the ICC to impact our focus on other key areas of concern with respect to Sudan, including ensuring the Government of Sudan uphold its international and national legal obligations, working with UN-AU Joint Chief Mediator Bassole to find a durable peace in Darfur, implementing the Comprehensive Peace Agreement, and achieving full deployment of of the UN/African Union Mission in Darfur (UNAMID).

¶10. (SBU) The U.S., UK, and France have all argued a deferral is not warranted by events on the ground. For seven months the Government of Sudan has been aware of the proceedings filed by the ICC's Prosecutor Luis Moreno-Ocampo. During this time the Government of Sudan has done little to demonstrate that a deferral of the ICC indictment would lead to progress on the Darfur Peace Agreement, improvement in the lives of the Darfuri people, or more rapid implementation of the CPA.

Point of Contact

¶11. (U) For further information, please contact Joseph J. FitzGerald at IO/UNP (fitzgeraldjj@state.sgov.gov).
CLINTON